UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 19-20038-CR-ALTONAGA

UNITED STATES OF AMERICA,

Plaintiff,

v.

LORENZO SHINE,

Defendant.
_____/

ORDER

THIS CAUSE came before the Court on Defendant, Lorenzo Shine's Motion to Suppress Physical and Testimonial Evidence and for an Evidentiary Hearing [ECF No. 13], filed on April 17, 2019. Defendant is charged with one count of possession of a firearm and ammunition by a convicted felon, in violation of 18 U.S.C. section 922(g)(1) (*see* Indictment [ECF No. 1]); and he seeks to suppress all physical and testimonial evidence obtained on September 28, 2018, stating the "evidence was obtained in violation of his rights against unreasonable searches and seizures, and, as a result, it must be suppressed as fruits of the poisonous tree." (Mot. 1). The Government filed a Response in Opposition [ECF No. 17] on May 8, 2019; and an evidentiary hearing was conducted on May 14, 2019 (*see* [ECF No. 24]) and May 15, 2019 (*see* [ECF No. 25]). The Court has carefully reviewed the parties' written submissions, the record, and applicable law.

I. BACKGROUND

A. The Parties' Written Briefing

i. Defendant's Version of the Facts

In his Motion, Defendant states on September 6, 2018, two men were shot by a rear passenger of a silver or grey Nissan sedan with dark tinted windows in Opa Locka, Florida.

(*See* Mot. 1–2). No witness was able to identify the car's tag number, the vehicle, or its occupants. (*See id.* 2). Opa Locka Police Department ("OLPD") detectives suspected Defendant was involved in the shooting; the car was registered to his girlfriend, Monique Dowe. (*See id.*).

At approximately 4:30 p.m. on September 28, 2018, OLPD Detectives Frantz Donat and John Guante arrived at a house occupied by Dowe; her two young children; Dowe's mother, father, and brother; and frequently the Defendant. (*See id.*). The officers saw Dowe's Nissan parked in the driveway, knocked on the front door of the home, and asked Dowe's father to have Dowe come outside. (*See id.*). When Dowe complied, the officers falsely told her she had been involved in a hit-and-run accident and asked about her whereabouts on September 6. (*See id.*). They also asked for consent to search her car for evidence related to the hit-and-run accident. (*See id.*).

After responding she did not have the car keys and had to call her mother to have her bring them, Dowe refused to provide consent. (*See id.* 2–3). Thereupon the detectives said they would obtain a search warrant for the car and tow the car. (*See id.* 3). The officers then observed Dowe's daughter and Dowe retrieve bags from the Nissan; and they also saw Defendant retrieve a gray bag and a colorful bag from the Nissan, place an unknown item from the glove compartment into the colorful bag, and bring both bags inside the house. (*See id.*). The detectives followed Dowe and Defendant into the house and ordered all inside the house to exit and wait outside. (*See id.*).

Once outside, Dowe and Defendant were not permitted to leave the scene, nor was anyone allowed back inside the house. (*See id.*). When asked why they could not reenter the home, the detectives stated they were waiting for a search warrant. (*See id.*). Approximately two hours after the detectives first arrived, and while Dowe and Defendant were detained in front of the home, detectives again asked Dowe for consent to search. (*See id.*). Dowe, believing the object of the search was her car for which the detectives had already sought a search warrant, and that she and

her children would be made to wait outside the home until either she signed the consent form or the search warrant issued, agreed and signed a consent-to-search form. (*See id.* 3–4).

Rather than search the car, officers re-entered the home, where they located a firearm and ammunition in the colorful bag they say Defendant had earlier removed from the car. (*See id.* 4). At that time, they did not seize the firearm or ammunition. (*See id.*). The officers also observed cocaine, MDMA, and a digital scale inside a bedroom. (*See id.*).

After this "consensual" search was completed, OLPD Detective Roberto DeMoya applied for a search warrant for the home. (*See id.* (citing Roberto DeMoya Affidavit for Search Warrant ("DeMoya Aff.") [ECF No. 13-3])). DeMoya prepared an affidavit that states: the vehicle observed at the home was used in a drive-by shooting, there is probable cause to believe the home contained evidence of possession of a firearm by a convicted felon and possession of cocaine with intent to distribute based on the detectives' observations inside the home after the consent was obtained, and Defendant confessed he placed the colorful bag inside the home knowing a firearm was inside it. (*See* Mot. 4–5; DeMoya Aff.). Yet, Detective Donat's October 12, 2018 affidavit in support of a search warrant for the car suggests Defendant only confessed to possessing the firearm after the warrant for the home was executed and the firearm seized. (*See* Mot. 5, n.4 (citing Frantz Donat Affidavit for Search Warrant [ECF No. 13-6])).

The September 28, 2018 search warrant contains several errors. (*See id.* 5 (citing Search Warrant [ECF No. 13-5])). The warrant incorporates the affidavit of a "Juan Gonzalez of Miami Gardens Police Department," regarding premises located in Miami Gardens. (*See id.*). Notably, the home in question is in Miami, and the affiants are DeMoya and City of Miami detective Borrego. (*See id.*). One paragraph appears to match the property sought in DeMoya's affidavit, while another paragraph describes the property sought as evidence of "identity theft" at another

location in Opa Locka. (*See id.*). The warrant does not actually authorize the City of Miami Police Department or the OLPD to execute a search. (*See id.*).

Notwithstanding the errors, OLPD officers executed the search, assisted by a City of Miami Police Department K-9 unit, seizing a .40 caliber firearm and ammunition. (*See id.* 5–6 & n.5). The firearm and ammunition are not the same as the ones used in the September 6 shooting. (*See id.* 6).

Dowe and her family were kept outside their home until the conclusion of the search at 11:30 p.m., seven hours after the police first arrived. (*See id.*). Although the car was towed at the conclusion of the search, a search warrant for the car was not requested or issued until October 12, 2018. (*See id.*). The State of Florida charged Defendant with possession of a firearm by a convicted felon, and the case remains open. (*See id.*). He was charged by federal Indictment in this case on January 24, 2019. (*See id.*).

ii. The Government's Version

According to the Government, a week after the September 6, 2018 drive-by shooting, the OLPD received an anonymous tip Defendant was involved in the shooting. (*See* Resp. 1). The OLPD reviewed surveillance footage and subsequent investigation showed Dowe drove a silver-gray Nissan Sentra matching the description of the car used in the shooting. (*See id.*). On September 28, 2018, OLPD Detectives Donat and Guante drove to Dowe's home to investigate, observing the Nissan Sentra parked in the driveway. (*See id.* 2). The detectives knocked on the front door and asked to speak to Dowe regarding the whereabouts of the car on September 6. (*See id.*).

Dowe gave evasive answers. (*See id.*). The detectives asked Dowe for consent to search the car; she consented but said she would need to retrieve the car keys. (*See id.*). A few minutes

later, Dowe returned and said her mother had the keys and would not be home for some time. (*See id.*). As Dowe was speaking to the detectives, her daughter exited the home and opened the car's left rear door, revealing the car was not in fact locked. (*See id.*). Dowe then withdrew her consent to search the car. (*See id.*). Detectives Donat and Guante returned to their cars and contacted OLPD Detective DeMoya, requesting his assistance in applying for a search warrant for the Sentra. (*See id.*).

Once the detectives reached their cars, they saw Defendant emerge from the home, approach the Nissan Sentra, open the front passenger door, reach for a colorful bag and a gray bag in the backseat, retrieve an item from the glove compartment, conceal that item in the colorful bag, and hurry back inside the house with both bags. (*See id.*). "Fearing that the Defendant had just retrieved the firearm used in the drive-by shooting," the detectives decided to secure the house so no one could access the bags taken from the Sentra. (*Id.*). To secure the residence, Guante made a limited entry into the house through the front door, which was still open, and ordered the occupants outside. (*See id.* 2–3). He told Defendant to put the bag down and step outside. (*See id.* 3). Once the occupants were outside, Detectives Donat and Guante explained they were applying for a search warrant for the house and no one could re-enter. (*See id.*).

A short time later, Detective DeMoya arrived to assist with applying for the search warrant. (*See id.*). He asked Dowe for consent to search, confirming she lived at the house and had access to all its rooms. (*See id.*). He explained to her that law enforcement was going to apply for search warrants for the house and car, but warrants would not be necessary if she gave them permission to search. (*See id.*). He explained she had the right to refuse consent. (*See id.*). The detective then asked her for consent to search the home and car. (*See id.*). Dowe acknowledged her rights and consented to searches of the home and car. (*See id.*).

Detective DeMoya presented Dowe with a consent-to-search form, which detailed Dowe's rights to refuse to consent to the searches and noted the locations to be searched as both the house and car. (*See id.*). Dowe acknowledged she understood her rights and signed the form. (*See id.* 4).

Detective Guante then led DeMoya inside the house directly to where he had seen Defendant attempting to hide the bag removed from the Sentra. (*See id.*). DeMoya looked inside the bag and saw a handgun loaded with 14 rounds of ammunition. (*See id.*). The detectives did not seize the pistol at that time. (*See id.*). They continued the "consensual" search, and in a bedroom appearing to belong to Dowe's brother, observed a clear bag containing suspect cocaine, a digital scale, and suspect MDMA pills in an open dresser drawer. (*See id.*). The detectives then left to apply for a warrant to seize the firearm and narcotics. (*See id.*).

After the search, the detectives arrested Defendant; they knew he was a convicted felon and was on a four-year term of probation following a prison sentence for armed robbery. (*See id.* 5). Defendant was handcuffed, read his *Miranda* rights, and placed in the back of a police car. (*See id.*). Defendant waived his *Miranda* rights and agreed to speak to DeMoya. (*See id.*). He admitted the firearm belonged to him and that he was the driver in the drive-by shooting, but he refused to identify the shooter. (*See id.*).

After Defendant's post-*Miranda* confession, Detective DeMoya drafted a search warrant for the house, signed the same day by a state judge. (*See id.* (citing Ex. 2, Affidavit for Search Warrant [ECF No. 17-2])). The warrant contains a section titled, "Description of the Premises To Be Searched (Dwelling)," which describes and includes a picture of the house searched. (*See id.*). The facts in support of probable cause explain Detective Guante responded to the location "in regards to an attempted murder investigation;" he saw a car "used in a drive-by shooting;" and

after questioning Dowe about the car, saw the occupants of the home "rush out to the vehicle[,] begin to retrieve bags from inside of the vehicle[,] then quickly take them into the premises." (*Id.* 5–6 (quoting Ex. 2) (alterations in original). The affidavit explains law enforcement followed Defendant and Dowe into the home and "secured the premises" for fear "the occupants may be destroying evidence." (*Id.* 6 (quoting Ex. 2)). The affidavit states DeMoya obtained written consent to search the house from Dowe, Guante led DeMoya to the exact area where he had seen Defendant place the bags removed from the car, and DeMoya found a semi-automatic handgun hidden inside a bag. (*See id.* (quoting Ex. 2)). The affidavit also informs Defendant is a convicted felon and confessed post-*Miranda* to possessing the gun. (*See id.* (quoting Ex. 2)).

Law enforcement obtained the search warrant and seized the firearm. (*See id.*). After Defendant's arrest and the state charges, the State Attorney's Office took no further action in prosecuting Defendant for attempted first-degree murder despite his confession to being the driver in the drive-by shooting. (*See id.*).

B. Evidence Presented at the Evidentiary Hearing

At the May 14, 2019 Evidentiary Hearing, the Government presented the testimony of four witnesses: Monique Dowe; and Detectives Guante, Donat, and DeMoya.

i. Monique Dowe

At around 3:30 p.m. on September 28, 2018, Monique Dowe and her boyfriend, the Defendant, were sleeping at Dowe's parents' home in Miami, Florida. (*See* Tr. 234:13–20). Dowe's father went inside Dowe's bedroom to let her know officers were outside asking to speak with her. (*See id.* 234:21–25). Dowe stepped outside to meet the two officers, who identified themselves as OLPD officers. (*See id.* 235:7–18). The officers told Dowe her car was involved

in a hit-and-run accident, stating the victim was a cyclist who was "about to die" and on "life support." (*Id.* 235:23–24).

Dowe stated she had never hit anyone on a bike and asked if they were certain they had the right vehicle. (*See id.* 236:1–4). The detectives insisted they did and asked if they could search the car for evidence. (*See id.* 236:4–5). Dowe asked if the detectives had a search warrant, to which one replied "Yeah." (*Id.* 236:8–10). When Dowe asked to see it, the detective "walked off," and Dowe returned inside the house. (*Id.* 236:11–12).

Dowe's mother was at work and had the keys to the car, so Dowe called her to bring them, thinking the car was locked. (*See id.* 237:12–24). Her mother told Dowe not to let the detectives search anything without a warrant; Dowe went back outside to once again ask the officers for a warrant, and they failed to produce one. (*See id.* 236:20–25).

One of the officers then stepped into the house to tell Dowe, Dowe's father, and Defendant to exit the home, as they "couldn't be in the house." (*Id.* 239:20). Dowe and the Defendant were not allowed to leave the property, but the officers allowed Dowe's father to pick up Dowe's two young children from school. (*See id.* 239:23–25).

Dowe did not know why she and the Defendant were not allowed to leave or why "[the detectives] had [Dowe] thinking [her] car was involved with running someone over." (*Id.* 241:14–15 (alterations added)). After some time, Dowe's father returned with the children, and they all waited outside with Dowe and the Defendant. (*See id.* 242:9–22). Dowe's three year old daughter opened the car door unprompted, and everyone realized the car had been unlocked the entire time. (*See id.* 243:18–23).

When the detectives told Dowe they would tow the car if she refused to agree to a search, she approached the car to retrieve a box of diapers. (*See id.* 245:1–13). Dowe, Defendant, and

the two children then walked into the house carrying the box of diapers, which Dowe testified was the only item she removed from the car. (*See id.* 245:14–22). After five or ten minutes, a detective entered the house, stating no one was allowed inside; Dowe, Defendant, and the two children complied and returned outside. (*See id.* 247:1–16).

Later, a third detective — who identified himself as the head of OLPD homicide — arrived. (*See id.* 247:15–24). The detective informed Dowe her car had been involved in a drive-by shooting, the police received a tip Defendant was involved, and her car was implicated. (*See id.* 248:8–18). Dowe asked the detectives a third time to produce a search warrant. (*See id.* 248:18–19). In response, a detective showed Dowe a blank piece of paper and stated "everything was going to be over if [Dowe] just let [the detectives] search the car." (*Id.* 249:11–12 (alterations added)). Dowe thought if she signed the piece of paper, the detectives would *only* search her car and the children could go back inside the house. (*See id.* 250:3–23).

When Dowe signed the paper, the detectives promptly entered the house and asked her to direct them to her bedroom. (*See id.* 251:2–4). After the detectives entered the bedroom, they returned outside, where Dowe, her children, and Defendant were waiting for a "long time." (*Id.* 251:5–7).

More police officers arrived. (*See id.*). Defendant was told he was detained, but not arrested. (*See id.* 251:13–14). At some point, an officer arrived with a dog and a search warrant. (*See id.* 251:5–8). Shortly thereafter, Defendant was placed in handcuffs and into an unmarked vehicle. (*See id.* 251:12–25). Dowe and her family were allowed to reenter the house between 11:00 p.m. and midnight. (*See id.* 254:1–12).

ii. Detective Guante

On September 28, 2018, Guante was working with Donat, travelling to a home in the Liberty City area of Miami. (*See id.* 167:1–11). The detectives' lieutenant had received an anonymous tip that a car at that address had been used in a drive-by-shooting. (*See id.* 167:17–21). Detective Guante did not personally hear the Crime Stopper Tip. (*See id.* 206:20–21).

After spotting the car, the detectives knocked on the front door; an elderly man answered and identified his daughter as the owner of the vehicle. (*See id.* 167:24168:5). The detectives questioned Dowe about the damage to her car under the pretense of a hit-and-run investigation. (*See id.* 168:5–11). Dowe stated she had just brought her car from the shop after an accident and agreed to let them look inside it. (*See id.* 168:11–14).

When Dowe entered the house to find her keys, she realized her mother had taken them. (*See id.* 169:16–20). Dowe called her mother, who told her she did not know when she would be home; the detectives decided to wait in their cars until the mother arrived. (*See id.* 170:5–17). The detectives told Dowe if she refused consent, they would obtain a search warrant and tow her car. (*See id.* 196:10–22).

Detective Guante called his lieutenant to provide an update. (*See id.* 171:22–25). While Guante was on the phone, Detective Donat witnessed a young girl enter the car and open its back door. (*See id.* 172:10–15). Dowe and Defendant then took bags out of the car. (*See id.*). Guante did not see the car door opened nor the bag removed. (*See id.* 172:16–20).

The lieutenant told Detective Guante to secure the house and vehicle to prevent evidence tampering, and to call DeMoya to help with obtaining a search warrant. (*See id.* 173:1–10). Guante instructed everyone to exit the house. (*See id.* 173:12–13). Dowe's father complied immediately, but Dowe and Defendant did not. (*See id.* 173:14–19).

When Detective Guante entered the house to remind Dowe and Defendant they had to leave, he witnessed them enter and exit a bedroom. (*See id.* 173:19; 201:3–17). Guante walked down the hall and saw Defendant place a multicolored bag in the foyer. (*See id.* 173:21–24). Defendant placed the bag on top of a pile of clothes; Guante then demanded Defendant and Dowe leave the house. (*See id.* 174:6–23).

After securing the home, Detective Guante walked Dowe and Defendant outside where he told Dowe they were waiting for another detective to arrive while other detectives were preparing an application for a search warrant. (*See id.* 175:6–11). Dowe's mother returned but left again with Dowe's father and children to attend a funeral. (*See id.* 176:19–177:5).

When Detective DeMoya arrived, detectives updated him and Guante provided him with a consent-to-search form Guante had filled out with the car's VIN number and the home's address. (*See id.* 177:8–14). Detective Guante saw Dowe sign the form and he signed as witness even though he had not heard DeMoya's conversation with Dowe about the scope of her consent. (*See id.* 179:11–180:2).

Dowe was not handcuffed, yelled at, or physically threatened before signing the consent-to-search form. (*See id.* 180:9–15). The three detectives entered the house; Guante checked the bedroom Dowe and Defendant had quickly entered and exited, and then he searched the foyer where he saw the bag Defendant had dropped. (*See id.* 181:2–182:6). Guante did not need to open the bag to see the firearm inside. (*See id.* 214:7–10). Once the firearm was discovered, the search ended, and Defendant was handcuffed. (*See id.* 183:6–9).

After this point, the witness could not recall the precise sequence of events. Detective DeMoya requested a marked unit that Defendant was placed into, but Defendant asked to leave the car and stretch his legs. (*See id.* 183:7; 189:15; 192:7–9). While sitting on the ground,

Defendant stated, unprompted, that the gun was his and Dowe was not involved. (*See id.* 189:6–25). Detective Guante originally testified the confession took place after the interview, later changed his testimony to state this event occurred before the interview, and then reverted to his original testimony. (*See id.* 188:12–14; 192:5–16; 229:19–25).

Defendant was *Mirandized* and interviewed by DeMoya in the back of Donat's vehicle, and DeMoya applied for a search warrant. (*See id.* 183:15–184:11). Guante is not sure which event occurred first. (*See id.* 184:8–11). DeMoya and Donat interviewed Defendant; Defendant asked Donat to leave and DeMoya to turn off the recording. (*See id.* 184:15–20; 188:15–17). At some point during that interview, Defendant told DeMoya he was the driver in the drive-by-shooting, but again Guante is unsure whether the Defendant confessed before or after Donat left and the recording device was stopped. (*See id.* 184:21–23). Defendant admitted to owning the firearm. (*See id.* 188:9–14). A K-9 unit was called to assist. (*See id.* 218:8–21).

Guante affirmed the affidavit DeMoya drafted contains several incorrect statements. The affidavit states Dowe refused to consent to a search of her car; Guante testified to the contrary, explaining Dowe never refused consent. (*See id.* 203:6–21). DeMoya's affidavit also states Guante saw the occupants of the house remove bags from the car, but Guante testified this was not so. (*See id.* 209:2–210:6). Guante testified the affidavit's statements that he had seen Dowe's car at the shooting and knew it to have been involved were inaccurate. (*See id.* 210:17–211:5). Guante also testified he did not know whether the bag Defendant dropped when exiting the house was the same bag Defendant removed from the car. (*See id.* 216:9–25).

iii. Detective Donat

On September 28, 2018, Detective Donat was working with his partner, Guante. (*See id.* 113:5–13). Donat asked Guante to drive to the house to investigate a vehicle suspected of being involved in a shooting. (*See id.* 114:4–6).

On the night of the September 6 shooting, a dispatcher calling in the incident indicated the vehicle may have been damaged. (*See id.* 115:15–17). Surveillance footage captured the vehicle, but only revealed its color and make — a silver or grey Nissan sedan. (*See id.* 115:20–22). Donat's lieutenant gave him information of a car that may have been involved in the shooting, including the tag number and type of car, and Defendant's name as the driver. (*See id.* 114:12–22; 115:3). The information Donat's supervisor provided came from a Crime Stopper Tip. (*See id.* 150:14–21).

The detectives arrived at the house, where they saw the car matching the description from the Crime Stopper Tip. (*See id.* 115:11–12; 116:11–13). The gray Nissan Sentra was visibly damaged. (*See id.* 115:15–25). After Donat took pictures of the car, the detectives knocked on the front door of the house. (*See id.* 116:2–5). After identifying themselves, the detectives asked an elderly man who answered for the driver of the Sentra. (*See id.* 116:8–12).

Dowe approached the officers and asked how she could help them. (*See id.* 116:13–17). Detective Donat "bluffed" Dowe when he claimed they were investigating a hit-and-run accident. (*Id.* 116:19–117:4). Dowe indicated she had not hit any vehicle, but that someone had hit her car and then left. (*See id.* 117:7–8). After Donat asked Dowe if there was paperwork to substantiate her claim, she told him the paperwork was in the car. (*See id.* 117:8–10). Donat asked Dowe "with your permission, can — can you go and then you can get the paperwork?" (*Id.* 117:11–12). Dowe agreed and went inside to bring her keys. (*See id.* 117:12–13).

Approximately 20 minutes later (*see id.* 117:14–15), Dowe came outside and told the detectives her mother had the keys (*see id.* 117:16–17). Donat asked Dowe if she could call her mother and have her bring the keys to retrieve the paperwork. (*See id.* 117:23–25). Dowe stated it would not be a problem (*see id.* 118:1), but when it started to rain, Dowe asked if the detectives would leave and return when her mother got back (*see id.* 118:10–13). Donat told Dowe they intended to wait there. (*See id.* 118:13–14). Guante suggested to Donat they should leave but Donat disagreed, concerned evidence would disappear if they left. (*See id.* 118:16–20).

Guante sat in his car, which was parked on the sidewalk just behind the Sentra. (*See id.* 119:13–14). While Donat was standing next to the front passenger door speaking to Guante, Donat observed a girl exit the house and enter the rear driver's side door. (*See id.* 119:18–23; 120:11–12). The girl did not remove anything from the car and went back inside the house. (*See id.* 119:23–24).

Dowe then exited the house, opened the car's rear door, and grabbed a small bag as well as a diaper bag. (*See id.* 120:23–25). Dowe also retrieved a "greenish-pinkish shiny bag" from the backseat and placed it on the front seat of the car. (*Id.* 121:1–3).

Donat never asked Dowe why she had claimed the car was locked; he surmised she was lying to him. (*See id.* 121:5–13). When Defendant exited the house, Donat identified him as the suspect to Guante using a photo his supervisor had sent him. (*See id.* 118:24–119:6). Guante suggested they stop Defendant and Dowe from entering the car. (*See id.* 122:7–8). Donat disagreed, stating "No, let them grab whatever it is they got to put inside the house. At that time, we can have everybody removed from the house." (*Id.* 122:8–10).

Defendant placed his knee on the front passenger seat and grabbed a colorful purple bag. (*See id.* 121:19–23). He placed the bag on the front passenger side, reached into the glove

compartment, grabbed an unidentified object, and placed it into the colorful bag. (*See id.* 121:23–122:1). Defendant took the colorful and the greenish pinkish bags into the house with Dowe. (*See id.* 122:3–5).

Guante called Detective DeMoya to ask for help in obtaining a search warrant. (*See id.* 122:11–14). DeMoya told Guante to instruct everyone to leave the house while he was working on the warrant application. (*See id.* 122:14–16; 148:3–5). The detectives were looking for shell casings or guns because the driver in the drive-by-shooting had not exited the vehicle during the shooting, and if the Sentra was in fact the vehicle used, evidence might still be found. (*See id.* 124:1–11). Donat and Guante agreed they would order everyone out of the house for the residents' safety and to prevent the destruction of evidence. (*See id.* 123:16–18; 124:15–16).

The detectives went to the front door. (*See id.* 122:21–23). Guante told the residents, "I need everybody out." (*Id.* 122:22). Dowe's father, brother and children complied. (*See id.* 122:24–123:1).

When Guante asked Dowe and the Defendant to exit, they asked for a minute to comply. (*See id.* 123:2–4). Donat told Guante that Dowe and Defendant were trying to hide something in the house. (*See id.* 123:4–5). Guante stepped closer to the door and repeatedly told Dowe and Defendant to get out. (*See id.* 123:6–7). When they did not respond, Guante entered the house. (*See id.* 123:8–10).

Guante told Donat he had seen Dowe and Defendant trying to hide the colorful bag in a closet. (*See id.* 123:11–13). Once outside, as owner of the car, only Dowe was not free to leave. (*See id.* 126:8–14). Indeed, when Dowe's mother arrived and asked the detectives if her family could leave to attend the funeral, Donat said all but Dowe could go. (*See id.* 127:6–9).

DeMoya arrived, the detectives updated him, and DeMoya asked Dowe for permission to search the house. (*See id.* 129:2–9). Guante handed DeMoya the consent-to-search form, one of the other detectives filled it out, and Dowe signed it. (*See id.* 129:11–15). Donat *saw* a conversation leading to Dowe signing the consent form, but he did not hear the conversation nor observe Dowe sign the form. (*See id.* 130:1–5; 153:24–154:3).

After receiving Dowe's consent, Guante informed DeMoya of the color and location of the bag he had seen and DeMoya entered the house. (*See id.* 131:4–8). After completing this first search, DeMoya told Donat he found a gun inside a bag. (*See id.* 134:3–7). The gun is a 9-millimeter firearm, while the gun used in the shooting was a .40 caliber firearm. (*See id.* 156:23–157:3). Narcotics were also found in a bedroom. (*See id.* 158:16–17).

DeMoya ordered Donat to place Defendant in handcuffs. (*See id.* 132:15–18). Defendant was not *Mirandized* nor interrogated immediately. (*See id.* 132:23–133:4). Donat walked Defendant over to the fence line while they waited for DeMoya. (*See id.* 133:9–11). DeMoya, Donat, and Defendant all entered Donat's car, following which the detectives *Mirandized* Defendant. (*See id.* 134:20–135:14).

DeMoya recorded his conversation with the Defendant, who confessed he was the driver in the drive-by-shooting. (*See id.* 136:4–14). Defendant then asked Donat to leave in order to speak to DeMoya without being recorded. (*See id.* 155:8–17). In that conversation, Defendant claimed ownership of the firearm and the bag's contents. (*See id.* 136:23–137:1).

After interrogating Defendant, DeMoya entered his car to prepare the paperwork for a search warrant. (*See id.* 137:7–15). The search warrant was eventually obtained, and a City of Miami K-9 unit was called in to search the house. (*See id.* 137:13–21). Once the K-9 unit finished,

Donat took part in a search of the house. (*See id.* 137:19–138:3). Donat found the gun inside a closet in the bag he had seen removed from the car and photographed it. (*See id.* 138:4–139:7).

A few weeks later, Donat prepared a separate affidavit to search the Sentra. (*See id.* 153:1–4). That affidavit stated, "Monique Dowe then provided your affiant and Detective Guante consent to search the home for a gun." (*Id.* 153:12–13). Donat claimed this was a typographical error, as it was DeMoya and Guante who asked Dowe for consent to search. (*See id.* 153:14–20).

iv. Detective DeMoya

On September 28, 2018, DeMoya joined Guante and Donat, who were on scene investigating the Opa Locka shooting. (*See id.* 6:16–22). When DeMoya arrived, Guante briefed him. (*See id.* 6:24–25). DeMoya walked over to Dowe and verified she was a resident and had custody and control of the home. (*See id.* 7:21–25). DeMoya asked Dowe if she would give "consent for her home based on the type of investigation that [the detectives] were there for." (*Id.* 7:10–11 (alteration added)).

DeMoya advised Dowe of her rights, including her right to refuse to consent to a search. (*See id.* 8:9–16; 11:14–21). DeMoya wrote Dowe's home address on the first line of the consent-to-search form and presented it to her. (*See id.* 11:14–25; 12:1–6). After reading the form, which explained the right to refuse to consent to the searches and specified the locations to be searched (the house and car), Dowe stated she understood, and DeMoya watched her sign the form. (*See id.* 10:13–21; 11:3–25; *see also* Ex. 1, Consent Form [ECF No. 23-1] 1). No one had yet been arrested nor handcuffed. (*See* Tr. 12:15–24).

After receiving Dowe's consent, DeMoya and Guante entered the home. (*See id.* 13:2–6). Earlier in the day (before DeMoya arrived), Guante witnessed Defendant take something from the glove compartment and place it in a colorful bag that he carried into the house. (*See id.* 16:2–6).

When conducting the first search, DeMoya and Guante went to an area of the house where Guante had told them the bag was located. (*See id.* 13:1–9). DeMoya moved around some clothing placed on top of the bag and found a gun inside. (*See id.* 13:2–9). The detectives did not seize the gun then; instead, they continued walking through the house. (*See id.* 13:9–10). In a bedroom, the detectives saw cocaine and MDMA pills. (*See id.* 15:2–5). The detectives then exited the house to apply for a warrant to seize the firearm and narcotics. (*See id.* 15:13–24). At this point, Defendant was detained and handcuffed. (*See id.* 16:4–6).

DeMoya read Defendant his *Miranda* rights, and Defendant confessed to owning the gun. (*See id.* 51:3–23). DeMoya then took Defendant to Donat's car to be interviewed. (*See id.*). During that conversation, DeMoya falsely told Defendant he had a surveillance video showing Defendant driving the car in the drive-by shooting. (*See id.* 47:10–22). As the interview progressed, Defendant asked the detectives to stop recording because he was going to provide details about the other shooters and the attempted murder. (*See id.* 45:13–25). Defendant asked Donat to leave. (*See id.* 49:18–24). During his conversation with DeMoya, Defendant confessed the gun belonged to him and he took it from the car and concealed it in a bag so he could carry it into the house. (*See id.* 46:1–14).

After Defendant's post-*Miranda* confession, DeMoya drafted a search warrant for Dowe's residence. (*See* Ex. 2). In preparing the electronic search warrant, Miami-Gardens police officer Juan Gonzalez provided DeMoya a search warrant template, which DeMoya used to draft the affidavit. (*See* Tr. 33:14–25).

The warrant contains several mistakes. Instead of writing his name on the search warrant used to search Dowe's home, DeMoya accidentally left Gonzalez's name on it. (*See id.* 33:1–2). The warrant states the home is in Miami Gardens, when in fact Dowe's home is in Miami, as is

correctly described in the affidavit. (*See id.* 33:3–12). The warrant includes a "property sought" paragraph, which describes the seizure of evidence in an identity theft case in Opa Locka. (*Id.* 35:2–21).

Despite these errors, the description and address of Dowe's home are the same as the description in the affidavit. (*See id.* 24:14–25; 25:1–11). DeMoya sent the forms to a state attorney for review. (*See id.* 38:23–25; 39:14). After receiving the warrant from the state attorney, DeMoya did not read it again, but sent it to the judge. (*See id.* 39:5–10). When DeMoya received the warrant from the judge, he only checked to see if it was signed. (*See id.* 39:11–15).

The process of obtaining the search warrant took a few hours, during which time Defendant was detained in a police car with Dowe "walking around freely outside." (*Id.* 20:1–6). Dowe and her family were not allowed inside the house, as the detectives wanted to prevent anyone from tampering with evidence. (*See id.* 20:7–17). The residents were not told they could not leave, and some of them came and left the property several times. (*See id.* 21:3–10).

II. ANALYSIS

Defendant raises several arguments in support of his suppression motion. First, he argues the officers' initial, warrantless, non-consensual entry into the home violates the Fourth Amendment. (*See* Mot. 7–9). Second, he states there was no consent to search the bag in which the gun and ammunition were found, or the bedroom where narcotics were observed because (1) any consent provided by Dowe was involuntary; and (2) even if Dowe's consent was voluntary, she did not have authority to consent to a search of the bag or the bedroom. (*See id.* 9–15). Third, the Motion argues the officers' warrantless seizure of the Defendant was unconstitutional, requiring suppression of subsequent statements. (*See id.* 15–16). Fourth, the search warrant is invalid because (1) it is based on illegally obtained as well as false and misleading information,

without which there was no probable cause for its issuance; and (2) the search warrant is invalid on its face. (*See id.* 16–20).

The Government refutes each argument. First, the Government states the officers' initial entry to secure the home is justified by exigent circumstances consisting of the risk of loss of evidence and risk of harm to law enforcement. (*See* Resp. 7–8). Should the Court not agree exigent circumstances existed, the Government relies on the inevitable discovery doctrine. (*See id.* 8–9). Second, the Government insists the first search of the home is valid based on Dowe's consent (*see id.* 9–13); but should the Court not agree, again, the inevitable discovery doctrine precludes suppression (*see id.* 13–14). Third, the Government states the seizure of the firearm and ammunition is valid because: it is based on a search warrant supported by probable cause; the search warrant is valid despite scrivener's errors; law enforcement reasonably relied on the search warrant; and the warrant was not necessary to seize the evidence. (*See id.* 14–19). Fourth, the Government argues Defendant's post-*Miranda* statements were made freely and voluntarily. (*See id.* 19–20). The Court considers the parties' competing arguments below.

A. Whether the Initial Entry Violates the Fourth Amendment

"The Fourth Amendment protects the individual's privacy in a variety of settings. In none is the zone of privacy more clearly defined than when bounded by the unambiguous physical dimensions of an individual's home . . . ." *McClish v. Nugent*, 483 F.3d 1231, 1240 (11th Cir. 2007) (quoting *Payton v. New York*, 445 U.S. 573, 589 (1980) (emphasis omitted; alteration added)). Significantly, "when it comes to the Fourth Amendment, the home is first among equals. At the Amendment's very core stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion." *Collins v. Virginia*, 138 S. Ct. 1663, 1670 (2018) (internal quotation marks and citation omitted). Consequently, a warrantless entry into the home

is unreasonable and subject to only a few "'jealously and carefully drawn' exceptions." *McClish*, 483 F.3d at 1240 (citations omitted).

Consent and exigent circumstances — that is, situations where the delay associated with obtaining a warrant gives way to an urgent need for immediate action — are exceptions the government bears the burden of proving are justified. *See id.* at 1241 (citations omitted). Exigent circumstances "'encompass[] situations such as hot pursuit of a suspect, risk of removal or destruction of evidence, and danger to the arresting officers or the public.'" *Bates v. Harvey*, 518 F.3d 1233, 1245–46 (11th Cir. 2008) (alteration added; quoting *United States v. Edmondson*, 791 F.2d 1512, 1515 (11th Cir. 1986)). The exigent circumstances exception also includes situations involving "danger of flight or escape" and "mobility of a vehicle." *United States v. Holloway*, 290 F.3d 1331, 1334 (11th Cir. 2002) (citations omitted).

To be clear, when relying on exigent circumstances to justify a warrantless entry into a home, the officer must also show probable cause exists. *See Bashir v. Rockdale Cty., Ga.*, 445 F.3d 1323, 1327–28 (11th Cir. 2006) (quoting *Kirk v. Louisiana*, 536 U.S. 635, 638 (2002)); *see also United States v. Tobin*, 923 F.2d 1506, 1510 (11th Cir. 1991) (warrantless search is permissible "where both probable cause and exigent circumstances exist." (citation omitted)). "In the typical case, probable cause exists where the circumstances would lead a reasonable person to believe a search will disclose evidence of a crime." *Holloway*, 290 F.3d at 1337 (citation omitted); *see also United States v. Lindsey*, 482 F.3d 1285, 1293 (11th Cir. 2007) ("Probable cause . . . exists when under the totality of the circumstances, there is a fair probability that contraband or evidence of a crime will be found . . ." (alterations added; quotation marks and citation omitted)). "An uncorroborated tip is insufficient, standing alone, to establish probable cause." *United States v. Johnson*, No. 18-10176, 2019 WL 1531761, at *2 (11th Cir. Apr. 9, 2019) (citation omitted). "The

observation of unusual activity for which there is no legitimate, logical explanation can be the basis for probable cause." *Id.* (quotation marks and citation omitted).

Defendant states without probable cause, the detectives' first entry into and search of the home cannot be justified under any exception to the warrant requirement, and this first search taints each subsequent search, including the "consensual" search and the search following the execution of the search warrant. (*See* Mot. 9). The Government insists law enforcement's observations of the Defendant retrieving an unknown item from the Sentra's glove compartment, concealing the item in a bag, and hurrying back inside the house with the bag led the officers to conclude Defendant had retrieved the firearm used in the drive-by shooting and taken it inside the house. (*See* Resp. 8). These observations purportedly gave the officers license to enter the home to secure the bag out of concern for officer safety and because of the risk the firearm would be removed or hidden before a warrant could be obtained. (*See id.*).

The Court must agree with the Defendant. While the detectives testified they went to Dowe's home because they had been informed Dowe's car may have been involved in the September 6, 2018 shooting, there is no apparent basis for that suspicion. (*See* Mot. 8). The State Attorney's Office No Action Memorandum indicates law enforcement could not identify any suspect or even the actual car involved in the drive-by shooting, other than the general reference to a "silver Nissan sedan with dark tints" and surveillance footage showing "an unremarkable silver sedan with dark tinted windows." (*Id.* Ex. 1). Without providing a valid basis for the suspicion the car involved was Dowe's — and none was given in the testimony presented at the Hearing — the Government has not established the existence of probable cause, which is a necessary precondition for a warrantless entry into the home predicated upon exigent circumstances. The uncorroborated Crime Stopper tip is insufficient.

Certainly, none of the officers testified seeing what Defendant retrieved from the glove compartment and placed into a bag, nor did any offer any reason to believe what was retrieved was a weapon used three weeks before in a drive-by shooting. On this record, detectives breached the "unambiguous physical dimensions" of the home on nothing more than a hunch that: (1) the unknown item Defendant removed from the glove compartment of a car, (2) that could possibly be the car used weeks earlier in a drive-by shooting, (3) was the weapon used in the weeks-old drive-by shooting, (4) one which they had no information Defendant had been involved in, (5) all the while the officers were observing his actions while waiting in the front yard of the house. The totality of these circumstances does not support a finding probable cause existed. *Cf. United States v. Carr*, 296 F. App'x 912, 916 (11th Cir. 2008) ("After [the officer] witnessed [the defendant] hide inside his pants a plastic bag that resembled packaging commonly used for narcotics and [the defendant] misidentified that object, [the officer] had probable cause to believe that [the defendant] was concealing narcotics." (alterations added)); *United States v. Amorin*, 810 F.2d 1040 (11th Cir. 1987) (noting "arresting officers had ample probable cause to believe that a green duffle bag which the defendant placed in the vehicle contained a large quantity of cocaine" because "[h]ours prior to the seizure, the defendant had shown to a reliable police informant two green duffle bags containing cocaine." (alteration added)); *United States v. Nunez*, 455 F.3d 1223, 1226 (11th Cir. 2006) ("That these containers were removed from a residence for which a law enforcement officer had probable cause to believe was a marijuana grow house – while the residence was under surveillance and shortly before it was to be searched – supports a reasonable suspicion that [defendants] were involved and were removing marijuana or related contraband from the Residence." (alteration added)); *Johnson*, 2019 WL 1531761, at *3 (while the officer "incorrectly suspected that the paper bag contained narcotics, [the officer] had trustworthy information that

[the defendant] had recently sold narcotics outside his home and under these circumstances a prudent person could reasonably believe that [the defendant] was engaging in another narcotics transaction." (alterations added)).

Given the absence of probable cause, the Court does not examine whether exigent circumstances, consisting of the Government's purported "concern for officer safety" and "risk that the firearm would be removed or hidden," are established. (Resp. 8). Without probable cause, the officers' initial entry into the home violated the Fourth Amendment.[1]

Anticipating the Court would find the officers' initial entry violates Defendant's Fourth Amendment rights, and in response to Defendant's contention "this first search taints each subsequent search of the home" (Mot. 9), the Government argues the evidence seen during that initial search "should nonetheless be admitted under the inevitable discovery doctrine." (Resp. 9). The inevitable discovery doctrine to the exclusionary rule allows the Government to introduce evidence obtained by an illegal search if the Government can establish a reasonable probability that the evidence would have been discovered by lawful means. *See United States v. Johnson*, 777 F.3d 1270, 1274 (11th Cir. 2015). The Government must also show lawful means which make the discovery inevitable were being "actively pursued" prior to the officers' illegal conduct. *See Jefferson v. Fountain*, 382 F.3d 1286, 1296 (11th Cir. 2004) (citations omitted).

[1] The Government appears to challenge Defendant's expectation of privacy in the home and its contents, and consequently his standing to object. (*See* Resp. 10–11, & n.2); *see also United States v. Cooper*, 203 F.3d 1279, 1284 (11th Cir. 2000) (noting "Fourth Amendment rights . . . are personal, and only individuals who actually enjoy the reasonable expectation of privacy have standing to challenge the validity of a government search." (alteration added; citation omitted)). The Government questions whether Defendant was staying at or was an overnight guest at the home at the time of the search. (*See* Resp. 10–11, & n.2). In her testimony, Dowe clarified she and the Defendant were sleeping inside the home at the time the officers knocked on the front door in the afternoon, waking them (*see* Tr. 234:13–20); and that Defendant would spend most nights sleeping at her house (*see id.* 232:19–233:18). As a frequent overnight visitor, Defendant has standing to challenge the searches of the home. *See Minnesota v. Olson*, 495 U.S. 91, 96–97 (1990).

While Detectives Donat and Guante were waiting for Dowe to return with the car keys, Donat saw the Defendant take an object from the glove compartment and place it into a colorful bag and then proceed inside the house with the colorful bag. Meanwhile, Guante's lieutenant instructed they secure the house and car to prevent evidence tampering and while they obtained DeMoya's assistance in preparing a search warrant. When Detectives Donat and Guante entered the home illegally the first time, the testimony is that Guante either observed Defendant place the bag on a pile of clothes or saw Defendant try to hide it inside a closet, but Guante never looked inside the bag. No evidence was obtained or discovered in this initial entry.

During this time, the detectives were actively pursuing lawful means to enter the home, namely, enlisting DeMoya's aid in preparing the search warrant. The Government is therefore correct that the firearm and ammunition would inevitably be discovered and were later discovered by "virtue of ordinary investigations of evidence or leads already in" the officers' possession. *United States v. Virden*, 488 F.3d 1317, 1323 (11th Cir. 2007) (quotation marks and citation omitted). Consequently, this first illegal search does not taint each subsequent search of the home.

B. Whether Dowe Voluntarily Consented to the Search of the Home and Bag

Defendant asserts when Dowe signed the consent-to-search form, she believed she was consenting to a search of her car only. (*See* Mot. 9). Should the Court not credit Dowe's testimony in this regard, Defendant next argues Dowe's consent was involuntary generally, and specifically invalid as to the bag containing the firearm and ammunition as well as the bedroom where narcotics were found. (*See id.*). For its part, the Government insists Dowe had authority to consent to the search of her home and its contents (*see* Resp. 10–12) and gave voluntary consent (*see id.* 12–13). Again, the Government relies on the inevitable discovery doctrine should the Court not agree with its positions regarding Dowe's authority to consent and voluntariness. (*See id.* 13–14).

First, authority to consent. "[I]n the absence of probable cause or reasonable suspicion, law enforcement officers may nonetheless search an individual without a warrant, 'so long as they first obtain the voluntary consent of the individual in question.'" *United States v. Camp*, 157 F. App'x 121, 123 (11th Cir. 2005) (alteration added; quoting *United States v. Blake*, 888 F.2d 795, 798 (11th Cir. 1989)). A third party has authority to consent to a search when she possesses "common authority over or other sufficient relationship to the premises or effects sought to be inspected." *United States v. Matlock*, 415 U.S. 164, 171 (1974). "The authority which justifies the third-party consent . . . rests . . . on mutual use of the property by persons generally having joint access or control for most purposes, so that it is reasonable to recognize that any of the co-inhabitants has the right to permit the inspection in his own right and that the others have assumed the risk that one of their number might permit the common area to be searched. *Id.* at 171 n.7 (alterations added; internal citations omitted). "[E]ven if the consenting party does not, in fact, have the requisite relationship to the premises, there is no Fourth Amendment violation if an officer has an objectively reasonable, though mistaken, good-faith belief that . . . he has obtained valid consent to search the area." *United States v. Brazel*, 102 F.3d 1120, 1148 (11th Cir. 1997) (alterations added; citation omitted).

Before entering the home the second time, the detectives confirmed Dowe was a full-time occupant of the house, with regular access to all its rooms. She certainly had the authority to consent to a search of her home. "Where a third party appears to have authority over the entire premises, the police may rely on that person's consent to search throughout the house, so long as the consent appeared to extend so far." *United States v. Almeida-Perez*, 549 F.3d 1162, 1172 (8th Cir. 2008) (citation omitted). In their search of the home, the detectives did not have to open any locked doors to rooms Dowe did not have access to. *Cf. United States v. Heltsley*, 33 F. App'x

270, 272 (9th Cir. 2002) (finding the defendant's wife did not have actual authority to consent to a search of a closet locked by the defendant to which she did not have a key and into which she gained access by removing the door's hinges). It is significant that Defendant was present during the events surrounding the "giving of consent" by Dowe, and "if the person who would refuse consent . . . doesn't object, then the consent of the co-occupant who is there is good as against the absentee or silent co-occupant." *United States v. Morales*, 893 F.3d 1360, 1369 (11th Cir. 2018) (citation omitted). "Had [Defendant] objected to the search, it might be different." *Id.* at 1370 (alteration added; citation omitted).

The detectives also observed Defendant retrieve a multicolored bag from Dowe's car, place an unknown object taken from Dowe's car in the bag, and bring it inside Dowe's house. Based on these observations, it was reasonable for the detectives to believe Dowe had "joint access or control" over the bag and item removed from her car. *Matlock*, 415 U.S. at 171 n.7. That it was the Defendant who handled the item and bag inside Dowe's car, took both inside Dowe's house, and placed them in a common room on top of a pile of clothes, did not "arguably ma[k]e it 'obvious'" that the multicolored bag and its contents "belonged specifically to" Defendant. *United States v. Peyton*, 745 F.3d 546, 555 (D.C. Cir. 2014) (alteration added); *cf. Almeida-Perez*, 549 F.3d at 1172 ("'To the extent a person wants to ensure that his possessions will be subject to a consent search due to his *own* consent, he is free to place these items in an area over which others do *not* share access and control, be it a private room or a locked suitcase under his bed.'" (emphasis in original; quoting *Georgia v. Randolph*, 547 U.S. 103, 135 (2006) (Roberts, C.J., dissenting))). Indeed, "[a] person with common authority over the premises is presumed to have authority over closed containers found there unless the police receive 'positive information' to the contrary." *Peyton*, 745 F.3d at 554 (quoting *United States v. Melgar*, 227 F.3d 1038, 1041 (7th Cir. 2000)).

Here, police did not receive positive information to the contrary, and assuredly not from Defendant, who was present.

Second, voluntariness.

"[W]hether a consent to a search was in fact 'voluntary' or was the product of duress or coercion, express or implied, is a question of fact to be determined from the totality of all the circumstances." *Schneckloth v. Bustamonte*, 412 U.S. 218, 227 (1973) (alteration added). Consent to search is voluntary "if it is the product of an essentially free and unconstrained choice." *United States v. Purcell*, 236 F.3d 1274, 1281 (11th Cir. 2001) (quotation marks and citation omitted). Factors a court should consider in evaluating voluntariness include a person's custodial status, *see, e.g.*, *United States v. Blake*, 888 F.2d 795, 798 (11th Cir. 1989); a person's awareness of the right to refuse consent, *see, e.g.*, *Purcell*, 236 F.3d at 1281; and whether police employ coercive procedures, *see, e.g.*, *United States v. Phillips*, 664 F.2d 971, 1023–24 (5th Cir. 1981), such as claiming authority to search a home under a warrant, *Bumper v. North Carolina*, 391 U.S. 543, 550 (1968).

Defendant asserts Dowe's consent to search was not voluntary because: when Dowe initially refused consent to search the car, detectives told her they were going to obtain a search warrant anyway and the car would be towed (*see* Mot. 10); police followed Dowe into her home and ordered all present to exit the home, unconstitutional acts that demonstrated their willingness to intrude on her privacy and property interests without lawful authority (*see id.*); police forbade Dowe from leaving the scene, an unconstitutional seizure and coercive behavior that negate consent; and hours later, believing the object of the search was her car, Dowe desperately wanted her children to be allowed back inside the home and signed the consent-to-search form (*see id.*

12). All of these events demonstrate Dowe's consent was obtained through duress and coercion. (*See id.*).

For its part, the Government emphasizes neither Dowe nor the others were handcuffed or threatened with arrest (*see* Resp. 12–13); Dowe was free to stop speaking to the detectives and ask them to leave and obtain a warrant (*see id.* 13); she was repeatedly advised of her right to refuse consent, both orally and in writing (*see id.*); and Dowe's claim she was desperate for her children to be allowed back inside the home shows she understood law enforcement was seeking and she was giving consent to search her home rather than her car (*see id.*).

The "totality of the circumstances," *Purcell*, 236 F.3d at 1281, show the detectives obtained Dowe's oral and written consent to enter the home through coercive tactics and her consent was not freely and voluntarily given. Dowe testified her mother had clearly instructed her not to allow the police inside the house, on more than one occasion Dowe asked the officers to be shown a search warrant, she was removed from her home after the officers walked inside her house without a warrant or exception to the warrant requirement, she was told she could not leave the premises, she was detained for hours with two very young children, and she was lied to about the reason for the officers being there and needing to look inside her car. *See United States v. Ivy*, 165 F.3d 397, 404 (6th Cir. 1998) (finding that hostile police action against a suspect's family, including rounding up children and threatening to keep children from entering their own home until search warrant was executed, and repeated requests for consent after refusal, undermined the voluntariness of consent; defendant's "will was indeed overcome"). The undersigned found credible Dowe's testimony she was given a blank piece of paper to sign and reassured everything would be fine if she just allowed the detectives to search her car. The Government has not met its

burden of showing Dowe voluntarily gave consent to enter and search her home. *See Schneckloth*, 412 U.S. at 222.

Third, inevitable discovery. As with the detectives' initial, illegal entry into the home, the Government states should the Court find Dowe's consent was not voluntary, the inevitable discovery doctrine supports admission of the challenged evidence seized from the home. (*See* Resp. 13–14). According to the Government, the detectives had probable cause to believe the house contained evidence of a crime and were actively pursuing a warrant prior to the purportedly consensual search. (*See id.*). As with the detectives' initial, illegal entry into the home, the incriminating evidence discovered upon this second non-consensual search is indeed admissible if the Government can show it would have been discovered by lawful means, and the only lawful means left to the Government are the affidavit for search warrant and the warrant that issued, following which the evidence was seized. The Court turns to consideration of this last avenue advanced by the Government.

C. Whether the Search Warrant Compels Denial of the Suppression Motion

Defendant next maintains the firearm and ammunition must be suppressed because the information gleaned from the detectives' unconstitutional conduct is what provides the basis for any probable cause supporting the issuance of the warrant. (*See* Mot. 16). Defendant states the search warrant application contains false and misleading information and is facially invalid due to numerous scriveners' errors and the lack of particularity about the premises to be searched and property to be seized. (*See id.*). If the Court should agree with Defendant on these contentions, which the Government disputes, the Government relies on the "good faith" exception to the exclusionary rule. (*See* Resp. 18–19).

Given the Court's findings the detectives' first and second searches of the home were illegal, the Government cannot rely on the detectives' observations of the home's and bag's contents as providing support for the search warrant. (*See id.* 14–16). Nevertheless, where an affidavit is based on information acquired because of an illegal search, as here, the evidence should not be suppressed so long as other information provided in the affidavit is sufficient to support a finding of probable cause. (*See id.* 14); *see also United States v. Chaves*, 169 F.3d 687, 693 (11th Cir. 1999) (where "search warrant affidavit is based on information acquired as a result of illegal entry," court "must look to whether the other information provided in the affidavit is sufficient to support a probable cause finding"). And where an affidavit includes false information, as Defendant asserts appears in DeMoya's application — particularly the affidavit's statement an on-site detective knew the vehicle at the home was used in a drive-by shooting (*see* Mot. 17 (citing Ex. 3)), evidence should not be suppressed unless the falsehoods "were necessary to the finding of probable cause." *United States v. Kapordelis*, 569 F.3d 1291, 1309 (11th Cir. 2009) (citing *Franks v. Delaware*, 438 U.S. 154, 171 (1978)). If, "with the affidavit's false material set to one side, the affidavit's remaining content is insufficient to establish probable cause, the search warrant must be voided and the fruits of the search excluded to the same extent as if probable cause was lacking on the face of the affidavit." *Franks*, 438 U.S. at 156. "The defendant bears the burden of showing that, 'absent those misrepresentations or omissions, probable cause would have been lacking.'" *Kapordelis*, 569 F.3d at 1309 (quoting *United States v. Novaton*, 271 F.3d 968, 987 (11th Cir. 2001)).

The Order's extensive recitation of facts supports Defendant's position the search warrant affidavit contains misleading and false information. (*See* Mot. 16–18). The Court does not repeat

the glaring misstatements, sloppy and careless drafting by DeMoya, and outright falsehoods here, except to acknowledge them once more.

Rather, the Court moves on to the next inquiry: whether the falsehoods were necessary to the state judge's probable cause determination. After discounting those portions of the affidavit that describe the false and illegally obtained information — uncovered during the first two searches of Dowe's home (*see* DeMoya Aff. 5[2]) — the state judge would have considered the Crime Stopper tip and descriptions of suspicious and furtive conduct by Dowe and the Defendant after Dowe was questioned about the car's whereabouts the day of the drive-by shooting. The state judge would have considered the Defendant's quick transfer of what appeared to the detectives to be incriminating evidence from the car to the home within minutes of law enforcement moving away from the front door of the house. These facts, combined with the background information that led the detectives to the Dowe residence in the first place, may have supported a finding of probable cause. *See United States v. Tobin*, 923 F.2d 1506, 1510 (11th Cir. 1991) (finding probable cause where law enforcement "observed the defendants behave suspiciously, look about furtively, and quickly transfer into the garage tubular bags" which might contain evidence).

The Court disagrees with Defendant's assertion the search warrant is invalid on its face (*see* Mot. 19), for failing to accurately describe the place to be searched or property to be seized, on the basis the warrant describes property as evidence of identity theft at a home located in Opa Locka and the affidavit incorporated into the warrant is the unrelated affidavit of Miami Gardens police officer Juan Gonzalez (*see id.* 19–20). In another section, the search warrant accurately

[2] The Affidavit states "When your affiant looked in your bag your affiant found a semi-automatic handgun hidden inside of the bag. A walk through of the premises revealed inside of a bedroom a clear bag which housed suspected powder cocaine . . . . Your affiant then interviewed Shine post Miranda [sic] Shine confessed to knowing the bag contained a firearm and admitted to placing the bag in the premises. At this point your affiant exited the premises and applied for a search warrant." (DeMoya Aff. 5 (alteration added)).

identifies the home to be searched, including the correct address and a photo of the home. While the warrant includes reference to property pertinent to an identity theft investigation, it also describes the property to be seized as consisting of firearms and ammunition. A "court should not invalidate a warrant based upon mere technicalities and errors of form." *United States v. Cash Today USA, Inc.*, No. 05-60016-Cr, 2005 WL 8156648, at *4 (S.D. Fla. Sept. 30, 2005), *report and recommendation adopted*, No. 05-60016-Cr, 2005 WL 8156649 (S.D. Fla. Dec. 12, 2005) (citing *United States v. Ofshe*, 817 F.2d 1508, 1514 (11th Cir. 1987)). This is especially the case here, where the detectives had first-hand knowledge of the home to be searched and the property to be seized — independent of their observations made during the first two entries into the home. *See United States v. Burke*, 784 F.2d 1090, 1092–93 (11th Cir. 1986) ("[T]his Court has also taken into account the knowledge of the officer executing the warrant, even where such knowledge was not reflected in the warrant or in the affidavit supporting the warrant." (alteration added; citation omitted)).

More importantly, however, even if the scrivener's errors rendered the warrant invalid, the firearm and ammunition are admissible because of the "good faith" exception to the exclusionary rule. Where law enforcement "reasonably rel[ied] on a warrant issued by a detached and neutral magistrate," *United States v. Leon*, 468 U.S. 897, 913 (1984), the "good faith" exception applies. *Leon* "stands for the principle that courts generally should not render inadmissible evidence obtained by police officers acting in reasonable reliance upon a search warrant that is ultimately found to be unsupported by probable cause." *United States v. Martin*, 297 F.3d 1308, 1313 (11th Cir. 2002). Nevertheless, the *Leon* good faith exception does not apply where: (1) the judge who issued the warrant was misled by information in the affidavit the affiant knew was false or made with reckless disregard for the truth; (2) the issuing judge wholly abandoned his or her role; (3)

the affidavit in support of the warrant lacks indicia of probable cause so as to render belief in its existence unreasonable; and (4) the warrant is so facially deficient in that it fails to particularize the places to be searched or things to be seized, that the executing officers cannot reasonably presume it to be valid. *See id.* (citations omitted). Defendant raises the fourth *Leon* exception, arguing "[the] search warrant is facially deficient, and invalid, and the officers were not reasonable in believing otherwise." (Mot. 20 (alteration added; citation omitted)).

As noted by the Government, *Massachusetts v. Sheppard*, 468 U.S. 981 (1984), is analogous to this case. (*See* Resp. 18–19). In *Sheppard*, the search warrant was "constitutionally defective because the description in the warrant was completely inaccurate and the warrant did not incorporate the description contained in the affidavit." 468 U.S. at 988 n.5. Yet, *Leon*'s good faith exception applied because the officer who executed the search knew the premises to be searched and the property to be seized as he drafted the affidavit, and he was able to search the correct location and seize the correct property described in the affidavit. *See id.* at 989 n.6. Furthermore, it was objectively reasonable for the officer to conclude the warrant signed by the judge authorized a search for the materials noted in the affidavit even though the judge had failed to ensure the warrant correctly reflected the information in the affidavit. *See id.* at 989–90. *See also United States v. Richardson*, 761 F. App'x 945, 948 (11th Cir. 2019) (noting affidavit alleged on two occasions drug residue or paraphernalia were found in garbage and on third occasion a small amount of drug remnants were found in trash in front of residence, and "[b]ased on these allegations, we cannot conclude that a warrant would be . . . 'so facially deficient' that it would have been unreasonable for an officer to" rely on it (alterations added)); *see also United States v. Vanbrackle*, 397 F. App'x 557, 561 (11th Cir. 2010) (rejecting claim warrant was facially deficient

because it "described and provided directions to the residence . . . and the warrant identified eleven particular categories of evidence that could be seized." (alteration added)).

Having determined the fourth exception to the *Leon* good faith exception is not shown, the Court must examine whether the detectives reasonably relied on the search warrant. "The good faith exception requires the court to consider whether a reasonably well-trained officer would know that the warrant was illegal despite the magistrate's authorization." *Martin*, 297 F.3d at 1318 (citation omitted). Information known to the officers, but not included in the warrant, may be considered in finding the *Leon* good faith exception to the exclusionary rule should apply. *See id.* at 1318–19 (citing cases).

Here, the detectives had acquired information, included in the affidavit for warrant, based upon two searches of the home that revealed the existence and location of the property described in the warrant — the firearm and drugs. The detectives believed their searches of the home were authorized, the first time by the claimed exigent circumstances and concern for officer safety, and the second by Dowe's purported consent. That the undersigned has rejected these excuses for the reasons explained in this Order does not negate the detectives' belief their actions were lawful or their knowledge of the home's contents, as later confirmed by a neutral magistrate by signing the search warrant. "[T]here is nothing in the record to suggest [the detectives'] reliance on the warrant was objectively unreasonable." *United States v. Robinson*, 336 F.3d 1293, 1297 (11th Cir. 2003) (alterations added).

Because the detectives relied in good faith on the search warrant in entering the home a third time and seizing the firearm and ammunition located inside, that evidence will not be suppressed.

D. Whether Defendant's Inculpatory Statements Must be Suppressed

Last, Defendant asserts his statements to law enforcement must be suppressed because the detectives lacked probable cause to believe he had committed a crime, yet they detained him by ordering him to exit the home and remain in the front yard. (*See* Mot. 15–16). Although at some point Defendant was read his *Miranda* rights, "[b]ecause his seizure was unconstitutional from its inception," the giving of *Miranda* warnings does not attenuate the taint of his unconstitutional seizure. (*Id.* 16 (alteration added)). According to the Government, although Defendant was not allowed inside the house until a search warrant was obtained, he was not detained until after the discovery of the firearm and ammunition, after which he was arrested. (*See* Resp. 19–20). At that point he was read his *Miranda* rights, and he then agreed to speak with law enforcement. (*See id.* 20).

Based on the detectives' testimony regarding these events, the Court must agree that Defendant was not ordered to remain in the front yard of the home; he was merely ordered to exit the house. "A seizure occurs for Fourth Amendment purposes . . . only when, by means of physical force or a show of authority, a person's freedom of movement is restrained." *United States v. Perez*, 443 F.3d 772, 778 (11th Cir. 2006) (alteration added; quotation marks and citations omitted). The Court does not resolve whether, in being ordered out of the home, the detectives "seized" or "detained" Defendant.

At some point, however, Defendant was handcuffed and detained in a patrol car. His freedom of movement was clearly restrained, and he was then subjected to custodial interrogation. "[A] post-*Miranda*-warning confession obtained by the exploitation of a Fourth Amendment violation may not be used against a criminal defendant." *United States v. Green*, 277 F. Supp. 2d 756, 761 (E.D. Mich. 2003) (alteration added; citing cases). Where law enforcement detains and

questions a suspect without probable cause, "well-established precedent requires suppression of the confession unless that confession was an act of free will sufficient to purge the primary taint of the unlawful invasion." *Kaupp v. Texas*, 538 U.S. 626, 632 (2003) (quotation marks, citation, and alteration in original omitted).

To the extent Defendant was detained after the two initial, unlawful searches, and interrogated, any inculpatory statements must be suppressed. To the extent he was detained, interrogated, and made inculpatory statements after waiving his *Miranda* rights following the third and only valid search, the Government will have to establish any taint from the initial illegal searches is dissipated. *See Brown v. Illinois*, 422 U.S. 590, 601 (1975).

III. CONCLUSION

Being fully advised, it is

ORDERED AND ADJUDGED that Defendant, Lorenzo Shine's Motion to Suppress Physical and Testimonial Evidence and for an Evidentiary Hearing **[ECF No. 13]** is **GRANTED** in part and **DENIED** in part. It is granted as follows. Defendant was afforded the evidentiary hearing requested, and any inculpatory statements made after Defendant was detained and during custodial interrogation are suppressed. Should there be any discrete statements the Government seeks to introduce that are not the fruit of the poisonous tree, the Government will have to make the necessary showing before offering them as evidence at trial. The Motion is denied in all other respects.

DONE AND ORDERED in Miami, Florida, this 25th day of June, 2019.

Cecilia M. Altonaga

CECILIA M. ALTONAGA
UNITED STATES DISTRICT JUDGE

cc: counsel of record